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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,435	07/18/2003	Thai Huynh-Ba	DCS-9179	4957

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DEERFIELD, IL 60015

EXAMINER
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CROSS, LATOYA I

ART UNIT	PAPER NUMBER
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1743

DATE MAILED: 09/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/622,435

Applicant(s)

HUYNH BA ET AL

Examiner

LaToya I. Cross

Art Unit

1743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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### DETAILED ACTION

This Office Action is in response to Applicants' remarks filed on June 27, 2005. Claims 1-6 remain to be pending in the application.

#### *Specification*

The Examiner notes with appreciation the corrections Applicants have made to the specification.

#### *Drawings*

The replacement drawings were received on June 27, 2005. These drawings are acceptable.

#### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

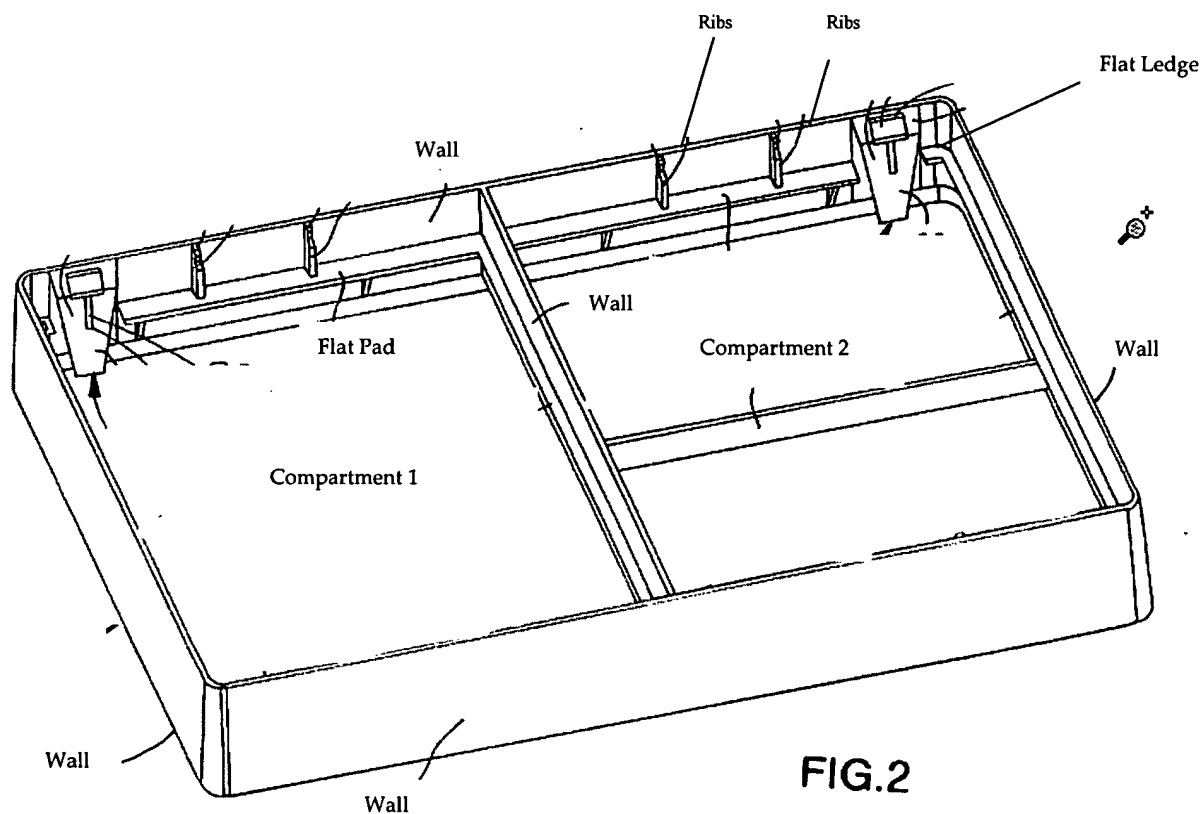
2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over US patent 6,098,819 to Link in view of US patent 6,321,609 to Mengel et al.

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Link teaches a magazine comprising a rectangular storage area having opposing walls (5, 6) and opposing walls (7, 8). Wall (9), in the middle of the storage area, creates two storage compartments for holding pipette tips. Within each storage compartment, there exist two pairs of ribs (25, 26) which protrude from the walls into the storage compartment. There also exists a "flat pad" and "flat ledge" that protrude into the storage compartment. Link further discloses tabs (15, 16) and hooks (21) that aid in locking one rack of pipette tips to another rack.



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Link differs from the instant invention in that there is no disclosure of 1) curved front and back surfaces and 2) a hinged gate. Link further differs in that the locking means are provided on the inside of the magazine, not the outside as claimed.

Mengel et al teach a magazine for holding gas sampling tubes. The magazine (14) has multiple compartments (153) for holding the tubes. Mengel et al teach that the slots are sized corresponding to the sampling tube to be stored. The slots taught by Mengel et al are curved on a front and back side. Mengel et al further teach a door (170) to allow the tubes to pass out of the magazine and into the gas sampling system. The door pivots about a door pin/hinge and it biased closed by a torsion spring (172). See col. 7, line 35 – col. 8, line 6 and figure 6.

It would have been obvious to one of ordinary skill in the art to use curved walls where the tubes or cuvettes being stored in the magazine are roundly-shaped, so that the tubes have a better fit in the magazine. Further, it would have been obvious to use a hinged door as a means to hold cuvettes inside the magazine or let the cuvettes move out of the magazine. The hinged door provides a mechanically simplistic means, yet effective means for holding cuvettes in their place until they are to be removed. With respect to the locking means being provided on the outside of the magazine, should would have been an obvious modification so that it would be easier for a user to separate two racks manually by lifting the rack and unhooking the tabs.

#### *Response to Arguments*

4. Applicant's arguments filed June 27, 2005 have been fully considered but they are not persuasive. With respect to the obviousness rejection over Link in view of Mengel et al, Applicants argue that the claimed device does not contain curved walls for the same reason as Mengel et al describes the use of curved walls and in the instant invention, rectangular (not round) cuvettes are used.

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In response to Applicants first argument of Mengel et al failing to teach curved walls so that multiple magazines may be stored in a circular cuvette loading station, the Examiner notes that MPEP 2144 states that rationale different from Applicant's is permissible. Thus, the art need not teach or suggest the same reason or advantage for modifying a reference. In the instant case, Mengel et al teaches curved walls to allow a better fit for round cuvettes. While the reasoning may be different from Applicants, motivation still exists.

With respect to Applicants' argument that the instant invention uses rectangular cuvettes, such is not a limitation in the claims, such that it could be relied upon for patentability. Applicants cannot use arguments directed to unclaimed limitations to support their position that the claims are distinguishable over the prior art.

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LaToya I. Cross whose telephone number is 571-272-1256. The examiner can normally be reached on Monday-Friday 8:30 a.m. - 5:00 p.m..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
MONIQUE T. COLE  
PRIMARY EXAMINER